



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN - 1 2016

REPLY TO THE ATTENTION OF  
LC-8J

**VIA EMAIL**

**TO: dclap@protocast.com**

Mr. Don Clapham  
President  
Prot-Cast, Inc.  
2699 John Daly Street  
Inkster, Michigan 48141

Consent Agreement and Final Order In the Matter of Proto-Cast, Inc.  
Docket Number    **EPCRA-05-2016-0015**

Mr. Clapham:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on June 1, 2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$21,800 is to be paid in the manner described in paragraphs 31 and 32. Please be certain that the docket number is written on the transmittal letter.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Meghan Dunn".

Meghan Dunn  
Enforcement Officer  
Pesticides and Toxics Compliance Section

Enclosure

cc: brianca@protocast.com  
klavalle@gaultdavison.com

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Proto-Cast, Inc.  
Inkster, Michigan,**

**Respondent.**



**Docket No. EPCRA-05-2016-0015**

**Proceeding to Assess a Civil Penalty  
Under Section 325(c) of the Emergency  
Planning and Community Right-to-Know  
Act of 1986, 42 U.S.C. § 11045(c)**

**Consent Agreement and Final Order**

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Proto-Cast, Inc. a corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.
8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.
9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

### **Statutory and Regulatory Background**

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed or otherwise used a toxic chemical in an amount exceeding an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. §§ 372.25 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for lead manufactured, processed or otherwise used at a facility is 100 pounds for calendar years including and subsequent to 2001.

13. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency's statutes. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section 313 of EPCRA that occurred after January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

14. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2699 John Daly Street, Inkster, Michigan (facility).

16. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined at Section 329(4) of

EPCRA, 42 U.S.C. § 11049(4).

19. The facility has a SIC code of 3364, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

**Count 1**

20. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, copper (CAS No. 7440-50-8), listed under 40 C.F.R. § 372.65, in the amount of 95,000 pounds which is greater than the 25,000 pound threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

21. Respondent was required to submit to the Administrator of EPA and to Michigan a Form R for copper for calendar year 2013 by July 1, 2014.

22. Respondent did not submit to the Administrator of EPA and to Michigan a Form R for copper for calendar year 2013 by July 1, 2014.

23. Respondent submitted Form R for copper to the Administrator of EPA and to Michigan on May 2, 2016 for calendar year 2013.

24. Respondent's failure to submit timely a Form R for copper to the Administrator of EPA and to Michigan for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

**Count 2**

25. During calendar year 2013, Respondent's facility processed, as that term is defined at 40 C.F.R. § 372.3, lead (CAS No. 7439-92-1), listed under 40 C.F.R. § 372.65, in the amount of 3,180 pounds which is greater than the 100 pound threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28.

26. Respondent was required to submit to the Administrator of EPA and to Michigan a

Form R for lead for calendar year 2013 by July 1, 2014.

27. Respondent did not submit to the Administrator of EPA and to Michigan a Form R for lead for calendar year 2013 by July 1, 2014.

28. Respondent submitted Form R for lead to the Administrator of EPA and to Michigan on May 2, 2016 for calendar year 2013.

29. Respondent's failure to submit timely a Form R for lead to the Administrator of EPA and to Michigan for calendar year 2013 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

#### **Civil Penalty**

30. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$21,800. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended) (April 12, 2001).

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$21,800 civil penalty for the EPCRA violations by an on-line payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

32. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Meghan Dunn (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Christopher Grubb (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

33. This civil penalty is not deductible for federal tax purposes.

34. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

36. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk (Effective Date).

37. Consistent with the “Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grubb.christopher@epa.gov (for Complainant), delap@protocast.com (for Respondent), brian@protocast.com (for Respondent), and klavalle@gaultdavison.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

38. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent’s responsibility to comply with EPCRA and other applicable federal, state and local laws.

41. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for Section 313 of EPCRA.

42. The terms of this CAFO bind Respondent, its successors and assigns.

43. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorneys fees in this action.

45. This CAFO constitutes the entire agreement between the parties.

**Proto-Cast, Inc., Respondent**

05-17-2016

Date

Don Clapham

Don Clapham  
President  
Proto-Cast, Inc.

**United States Environmental Protection Agency, Complainant**

5/26/16

Date

Allen Heller

for

Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**

**Proto-Cast, Inc.**

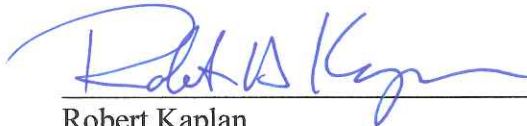
**Docket No.**

**EPCRA-05-2016-0015**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

May 27, 2016  
Date



Robert Kaplan  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

EPCRA 313 Consent Agreement and Final Order

In the Matter of:

Proto-Cast, Inc.

Docket No. EPCRA-05-2016-0015

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on June 1, 2016, in the following manner to the following addresses:

Copy by E-mail to Respondent:

Brian Covington (brianc@protocast.com)

Copy by E-mail to Respondent:

Don Clapham (dclap@protocast.com)

Copy by E-mail to  
Attorney for Complainant:

Christopher Grubb (grubb.christopher@epa.gov)

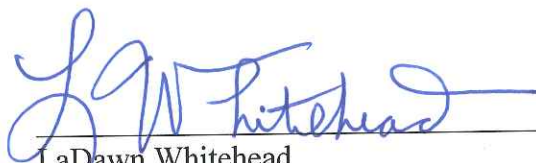
Copy by E-mail to  
Attorney for Respondent:

Kevin Lavalley (klavalle@gaultdavison.com)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle (coyle.ann@epa.gov)

Dated: June 1, 2016



LaDawn Whitehead

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5